IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8825 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJPUT JORSINH RAKHDUBHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR UDAY BHATT Ld. AGP for Respondents

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 03/10/2000

ORAL JUDGEMENT

1. The petitioner detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 11.1.2000, page 13, passed by respondent no. 1 in respect to detenu- Rajput Jorsinh Rukhadbhai in

exercise of his powers conferred on him under Sec. 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (in short 'the Act').

2. As per the case of the detaining authority, the detenu is a "dangerous person" within the meaning of Sec. 2(c) of the Act and that his activities are prejudicial to the maintenance of public order. To arrive at a subjective satisfaction, the detaining authority has placed reliance on three different criminal cases which are lodged against the detenu in different Police Stations of Bhavnagar district. Out of that three cases, all cases are pending in the criminal court for trial. The detaining authority has also placed reliance on statements of three witnesses whose identity has not been disclosed by claiming privilege under Sec. 9(2) of the Act for he having been subjectively satisfied before passing detention order.

3. Though rule has been served upon each respondent, none of the respondents has filed affidavit-in-reply in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging an order of detention which is the subject matter of this writ petition.

4. Learned advocate for the petitioner has drawn my attention to three different statements of witnesses whose name and identity have been not disclosed to the detenu. These statements were verified by the detaining authority on 10.1.2000 and after making verification, he wrote the words "verified the contents" in the margin of the statement of each such witness on 10.1.2000 and on the next day he passed the order of detention which came to be executed on 11.1.2000.

5. Learned advocate for the petitioner has argued that this short-cut method of putting an endorsement of "verification" itself shows that the detaining authority has not applied his mind before passing an order of detention. She has cited authority of JAKIRBHAI RAHIMBHAI NAGORI Vs. DISTRICT MAGISTRATE, MEHSANA AND OTHERS reported in 1996(1) G.L.H. 300. Looking to the facts of that cited case, in that case the detaining authority had only put an endorsement in form of one word "verified" below statements of such witnesses. This Court has held that the claim of privilege made by the detaining authority on the basis of such endorsement was not genuine and, therefore, the order of continued

detention was held to be illegal and in that case the order of detention was set aside and detenu of that case was released. Here in this case also the detaining authority has put an endorsement of words "verified the contents" and therefore the claim of privilege made by detaining authority under Sec. 9(2) of the Act was not genuine and to the aforesaid extent the detenu was denied for making effective representation by not supplying to him the other details of the statements of witnesses. Thus, continued detention of the detenu in this case is bad in law and illegal. On relying aforesaid authority, this petition deserves to be allowed and the order which is challenged in this writ petition deserves to bee quashed and set aside.

6. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 11.1.2000 passed by respondent no. 1 in respect to detenu is set aside. The detenu is ordered to be released forthwith if he is not wanted in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)
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